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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1070 94

BOARD OF COMMISSIONERS OF SAN JUAN,
Petitioner,

vs.

CARLOS M. DE CASTRO.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement	2
Statement of jurisdiction	6
Questions presented	6
Reasons relied on for the allowance of the writ	7
Prayer for writ	9
Certificate of cousel	9
Brief in support of petition for writ of certiorari	10
Opinions below	10
Jurisdictional grounds	10
Statement	10
Specification of errors to be urged	12
Argument	13
Summary of Point I	13
Point I	13
Summary of Point II	16
Point II (a)	16
Point II (b)	23
Conclusion	28
Appendices	29

Table of Cases Cited.

Bank v. *State et al.*, 68 Pac. (2d) 1076	21
Belaval v. *Todd*, 22 P. R. R. 593	25
Board of Canvassers, Baxter et al. v. *Sleeman*, 221 N. W. 382	18
Board of Commissioners v. *Pinnacle Gold Mining Co.*, 85 Pac. 1005	20
Bonet v. *Yabucoa Sugar Co.*, 306 U. S. 506, 511, 83 L. Ed. 946, 950	10, 11, 14
Cabassa v. *Bravo*, 21 P. R. R. 173	17
Carrero v. *Diez & Perez*, 27 P. R. R. 433	17
Booth v. *Domestic Water Co.*, 49 Pac. 368	23
Carilli v. *Hersey*, 20 N. E. (2d) 492	21
Coll v. *Todd*, 35 P. R. R. 573	27

Page

District of Columbia v. *Clawans*, 300 U. S. 617, 81 L. Ed. 843 17
Fernández Vanga v. *Pavia*, 42 P. R. R. 740 27
Hagerty v. *Shedd*, 75 N. H. 396 25
Gromer v. *Standard Dredging Co.*, 224 U. S. 362, 56 L. Ed. 801 ..... 11, 13
In re Jeness, 261 N. W. 415 18
In re Sutter-Butte, 218 Pac. 27 20
Luten et al. v. *Smith*, 163 N. E. 536 20
McCulley v. *State*, 46 L. R. A. 571 25
Norman v. *Consolidated Cement Co.*, 274 Pac. 233 23
Peters v. *Chicago & N. W. R. Co.*, 165 Wis. 529, 162 N. W. 916 18
Petition of Forbes, 146 N. E. 448 19
Phelps v. *Board of Appeals*, 325 Ill. 625, 156 N. E. 826 20
Pilgrim Consol. Mining Co. v. *Board of Commissioners*, 78 Pac. 617 20
Porto Rico v. *Rosaly & Castillo*, 227 U. S. 270, 57 L. Ed. 507 ..... 11, 13
Puerto Rico v. *Shell Co.*, 302 U. S. 253 ..... 11, 13
Reetz v. *Michigan*, 188 U. S. 505, 47 L. Ed. 563 18
Rivera Aromi v. *Municipal Assembly*, 39 P. R. R. 71 27
Sifre v. *Pellón*, 54 P. R. R. 568 25
Standard Oil Co. v. *Missouri*, 224 U. S. 617, 81 L. Ed. 843 17
State et al. v. *Hitchcock*, 16 L. R. A. 413 25
State v. *State Bank*, 137 Pac. 400 22
Valldejuli v. *De Castro*, 52 P. R. R. 286 ..... 26, 27
Wilt v. *Cold Storage Co.*, 110 N. W. 177 23

TEXT BOOKS.

Corpus Juris Secundum, Vol. 1, page 973, Sec. 5 24
Corpus Juris, Vol. 59, page 1130, Sec. 669 24

STATUTES.

United States Code Anno., Vol. 28, Sec. 350 1
Puerto Rico Act No. 99 of May 15, 1931 ..... 11, 15, 29
Puerto Rico Act of March 10, 1904, to establish writs of certiorari 2

Page

Code of Civil Procedure of Puerto Rico, 1933 Ed. 3, 4
Organic Act of Puerto Rico, 29 Stat. 951 5, 8, 11, 13
Judicial Code of the United States, Sec. 240 (a) 6, 10
Act of Congress of February 13, 1925 (43 Stat. 938) 6, 10
Puerto Rico Act of March 9, 1911 (Session Laws of 1911, page 124) 18
Puerto Rico Act of April 19, 1927 (Session Laws of 1927, p. 124) 19
Puerto Rico Act of April 25, 1931 (Session Laws of 1931, p. 380) 19
Puerto Rico Act No. 11 of 1924 (Special Session Laws of 1924) 26

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CARLOS M. DE CASTRO.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the Board of Commissioners of San Juan, Puerto Rico, prays a writ of certiorari to review the judgment of the Circuit Court of Appeals, First Circuit, entered on January 10, 1941, in the cause entitled Board of Commissioners of San Juan *versus* Carlos M. de Castro (No. 3643), affirming judgment of the Supreme Court of Puerto Rico, which reversed judgment of the District Court of San Juan, Puerto Rico.

The term for filing petition for a writ of certiorari shall expire on May 20, 1941, since a petition for rehearing of the judgment entered by the Circuit Court of Appeals was denied on February 20, 1941. 28 U. S. C. A. 350.

Summary Statement.

The controversy herein began on December 10, 1938, when a petition was filed with the Board of Commissioners of San Juan, Puerto Rico, praying that the charges specified in said petition be preferred against the then City Manager of San Juan, Doctor Carlos M. de Castro, and praying, further, that the Board initiate impeachment proceedings against said city manager, in conformity with the provisions of Section 22 of Act No. 99 of May 15, 1931, "to establish a special government for the Capital of Puerto Rico and for other purposes" (R. 46-55).

The requisite hearing was held, and, finally, a resolution was approved by the Board finding several of the charges duly proved and decreeing the removal of the City Manager (R. 6-9). This resolution was unanimously approved by all the commissioners.

Six days later (R. 1-15), the ousted officer, ostensibly acting pursuant to Section 46 (See appendix) of the aforesaid Act, filed before the District Court of San Juan a petition to review the action of the Board and to annul the resolution which decreed his removal from office. The proceedings thus initiated avowedly were not brought under the provisions of the "Act to establish writs of certiorari", approved by the Insular Legislature on March 10, 1904 (See Code of Civil Procedure of Puerto Rico, 1933 Ed., page 272 *et seq.*). As already stated, the petition for review was filed expressly as allegedly authorized by Section 46 of the Act to establish a special government for the Capital of Puerto Rico.

After hearing, the District Court of San Juan dismissed the petition (R. 38-46). It held that the evidence presented to the Board to substantiate charges number VI and XXII was conflicting, and that under the repeated jurisprudence of the Insular Supreme Court, and in view of the respect

due to the constitutional separation of powers between the three branches of government, it could not validly substitute its opinion for that of the Board in the weighing of evidence and in its conclusions of fact (R. 44-45).

An appeal was then taken by the ousted city manager to the Supreme Court of Puerto Rico from the judgment of the local district court (R. 75-76). This appeal was prosecuted in the ordinary manner provided by the Code of Civil Procedure for appeals in civil cases (Code of Civil Procedure of Puerto Rico, 1933 Ed., Sections 292 and 295). The special statute under which the original petition for review was filed by respondent herein in the District Court of San Juan does not grant the right of appeal to the Insular Supreme Court from judgments rendered in proceedings instituted under Section 46 of said special statute.

Petitioner herein questioned the jurisdiction of the local District Court (R. 19-28) on the grounds that Section 46 of the special statute mentioned creates, as a new and special remedy, a writ of review directed to correct only "*legislative or administrative*" acts of the Board of Commissioners, and since the removal for cause and after hearing of a public officer is an act not legislative or administrative, but of a judicial or quasi-judicial nature, and since the special proceeding for review created by Section 46, *supra*, should not be enlarged or extended by judicial construction so as to embrace other cases not expressly included therein, the District Court obviously had no jurisdiction to act in the premises. Said court, however, postponed its decision on the matter (R. 36-37), and in the end never passed on the point.

The jurisdiction of the Insular Supreme Court was, therefore, also questioned by petitioner herein (R. 201-220). In addition to the reasons set forth to demonstrate the District Court's lack of jurisdiction, which, consequently, showed the want of jurisdiction of the appellate tribunal,

a further point was raised in the Insular Supreme Court to establish its want of authority over the appeal taken. Summarily stated, it is as follows:

Section 46 of the special act in controversy created an extraordinary proceeding by providing a new remedy for a new situation, namely, a writ of review to correct any legislative or administrative act of the Board of Commissioners which should be contrary to the Organic Act or to the laws of Puerto Rico. The remedy thus created is exclusive and is not included among those contemplated by the pertinent provisions of the Code of Civil Procedure (1933 Ed., Sections 292 and 295). Jurisdiction is granted solely and exclusively to the District Court of San Juan, and the statute does not authorize an appeal from the judgment to be rendered by said District Court. It is obvious, therefore, that in the absence of specific statutory authority, the right of appeal to the Insular Supreme Court is not available to any of the parties, and, hence, that said Supreme Court cannot entertain and decide an appeal taken, its judgment being consequently void.

These contentions were implicitly overruled by the Insular Supreme Court (R. 356), and, the case having been fully submitted to that court, judgment was entered on June 28, 1940, reversing that of the local District Court and ordering the reinstatement of respondent herein in the office of City Manager of San Juan, said reinstatement to date back from January 5, 1939, when he was suspended from office (R. 188).

The opinion of the Insular Supreme Court is clearly erroneous in various respects, but, for the purposes of this petition, it is sufficient to mention assignment of error marked number 5 (R. 223) in the appeal documents filed in the Circuit Court of Appeals. One of the charges preferred against the City Manager (number 22; R. 53) was to the effect that said City Manager failed deliberately to put

in effect and enforce ten or more ordinances specifically mentioned, which had been duly approved by the Board of Commissioners. The Board heard evidence on the matter and found the charge duly proved, concluding that respondent herein had, as a matter of fact, "voluntarily, purposely, systematically and negligently, without legal or moral excuse, knowingly, and ignoring the express mandate of the Board, failed to comply with the obligations and duties imposed upon him by ordinances number 360, 367 and 371 of the Board * * *" (R. 8).

Passing on this charge and on the evidence presented to sustain it, the local District Court held that there was a conflict in the evidence of both parties, and refused to substitute its opinion for that of the Board (R. 44).

The Insular Supreme Court took a different view of the matter. Plainly disregarding the constitutional division of powers between the three branches of government, it concluded that the City Manager's failure to put into effect the ordinances was nothing more "than perhaps an abuse of discretion or a difference in opinion as to the merits of the ordinances, and were not the just cause to which the statute relates" (R. 185). It was, thereby, judicially established that all municipal legislation is subject in Puerto Rico to the Municipal executive's opinion with regard to the merits or demerits of said legislation. The constitutional division of powers inherent in our government system (See Organic Law of Puerto Rico, 48 U. S. C. A. 737, 39 Stat. 951) was thus ignored.

An appeal having been granted to the Board of Commissioners from the judgment of the Insular Supreme Court (R. 230), the Circuit Court of Appeals for the First Circuit entered judgment on January 10, 1941, affirming that of the Supreme Court of Puerto Rico (R. 241) and denied rehearing thereof on February 20, 1941 (R. 264). The judgment of the Circuit Court of Appeals (R. 241-242) is

based only on the assertion that the Insular Supreme Court was not "inescapably wrong" in its conclusions, and that, although the Circuit Court does not necessarily approve all the language in the opinion of the Insular Supreme Court, it cannot be said that that Court was "patently erroneous" in its conclusion that the evidence did not establish the statutory just cause required for removal of the City Manager.

An elaborate petition for rehearing was filed by petitioner herein in the Circuit Court of Appeals (R. 242-261). It was denied on February 20, 1941 (R. 264).

Statement of Jurisdiction.

The jurisdiction of this Hon. Court is invoked under the provisions of Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, C. 299, Sec. 1, 43 Stat. 938 (28 U. S. C. A. 347).

The judgment of the Circuit Court of Appeals for the First Circuit was entered on January 10, 1941 (R. 241), and rehearing thereof was denied on February 20, 1941 (R. 264).

Questions Presented.

This petition involves three questions of law:

1. Whether or not the Circuit Court of Appeals erred in finding that the Supreme Court of Puerto Rico was not inescapably wrong in assuming jurisdiction over this controversy, absent any statutory or constitutional authorization so to do, and in spite of the fact that the special statute under which respondent herein acted fails to grant the right of appeal from the judgment of the local District Court to the Insular Supreme Court, as well as in view of the fact that the local District Court had not, in the first instance, jurisdiction over the subject matter, so that, on appeal, the appellate tribunal could not acquire jurisdiction over the subject matter.

2. Whether or not the judgment of the Supreme Court of Puerto Rico, reversing that of the local District Court, is not patently erroneous insofar as it fails to recognize our constitutional division of powers between the legislative and executive branches of government, since it declares that a municipal executive is not subject to removal for his deliberate failure to enforce municipal ordinances, further stating that such omission is at most an abuse of discretion or a difference in opinion as to the merits of the ordinances, and never constitutes the just cause required for removal from office in impeachment proceedings.

3. Whether or not the judgment of the Supreme Court of Puerto Rico is palpably null and void, for lack of jurisdiction, and, consequently, constitutes a plain denial to petitioner herein of due process of law, in view of the fact that the local District Court of San Juan acted without jurisdiction or authority and, therefore, on appeal from its judgment, the Insular Supreme Court could not acquire jurisdiction to consider and decide the case.

Reasons Relied On for the Allowance of the Writ.

This case involves important questions of local constitutional law affecting each and every one of the seventy-seven municipal governments now organized in the Island of Puerto Rico. By virtue of the precedent established by the Insular Supreme Court and sanctioned by the Circuit Court of Appeals for the First Circuit, the all important separation of powers between two of the three coordinate branches of municipal government has been repudiated, insofar at least as all municipal executives are left free to enforce or ignore municipal legislative enactments, according to whether they deem such enactments wise or not.

To hold, as the Insular Supreme Court did, later sanctioned by the affirmance of the Circuit Court of Appeals,

that such dictatorial powers can validly reside in the office of City Manager or Mayor of a municipality, and that the deliberate omission to enforce municipal legislation duly approved and promulgated amounts at most to an abuse of *discretion* and not to the just cause required by the statute for removal from office, wholly subverts our democratic form of government, and is in conflict with the letter and spirit of the Organic Law of Puerto Rico (39 Stat. 951, 48 U. S. C. A. 737), which created for the Island a government patterned after those of the separate states, divided into three departments, the executive, the legislative and the judicial.

Petitioner herein respectfully submits, and earnestly believes, that the Circuit Court of Appeals has so far sanctioned a departure by the Supreme Court of Puerto Rico from the accepted and usual course of judicial proceedings, as to call for the exercise of the power of supervision of which this High Tribunal is invested, in order that a fundamental principle of the democratic form of government prevailing in all the municipalities of Puerto Rico be effectively safeguarded and upheld.

It is obviously unnecessary to cite precedents in support of the point as to lack of due process of law in the premises, based on the want of jurisdiction in the Insular Supreme Court to enter its judgment in the instant case. A judgment rendered without jurisdiction over the subject matter is a mere nullity, and its enforcement violates substantial constitutional rights of the party affected. In the case at bar, the party affected is the legally constituted governing body of the Capital of Puerto Rico, representing the interests of over two hundred thousand citizens who, manifestly, are entitled to have their rights protected against unlawful encroachments, and who desire to be governed in accordance with democratic ideals and principles, as the Congress of the United States intended they should be governed.

Wherefore your petitioner respectfully prays that a writ of certiorari be granted herein and the judgment of the Circuit Court of Appeals for the First Circuit, in the case entitled *Board of Commissioners of San Juan* versus *Carlos M. de Castro,* No. 3643, affirming the judgment of the Insular Supreme Court which reversed that of the District Court of San Juan, be reversed.

F. Fernandez Cuyar,
Attorney for Petitioner.

H. Gonzalez Blanes,
Of Counsel.

I hereby certify that the foregoing petition, in my opinion, is well founded and entitled to be considered by this Court, and, further, that it is filed in good faith and not for the purpose of delay.

San Juan, Puerto Rico, May 13, 1941.

F. Fernandez Cuyar.